



17 JUL 2002

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Yehouda Harpaz
129 Corrie Road
Cambridge CB1 3QQ
United Kingdom

In re Application of :
Harpaz :
US Application No.: 10/070,236 :
PCT Application No.: PCT/GB00/03503 :
International Filing Date: 11 September 2000 :
Priority Date: 27 October 1999 :
For: CONSTRAINED DOCUMENT SERVER :

DECISION ON PETITION
UNDER 37 CFR 1.181

This decision is in response to the correspondence filed on 12 August 2002, asserting timely submission of the basic national fee required by 35 U.S.C. 371(c)(1). The correspondence is being properly treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-referenced international application.

BACKGROUND

On 11 September 2000, Applicant filed international application PCT/GB00/03503, which claimed priority of an earlier application filed on 27 October 1999. A Demand for International Preliminary Examination was filed on 4 April 2001, prior to 27 May 2001, when the 19th month from the 27 October 1999 priority date would expire. Therefore, the period for entering the national stage is 30 months and ended on 27 April 2002.

The basic national fee was not paid on or before 29 April 2002 (Monday). The international application was held abandoned as to the United States on 28 April 2002. A Notice of Abandonment (Form PCT/DO/EO/909) was mailed on 17 July 2002.

The instant petition asserts that an authorization for the USPTO to charge the basic national fee to Applicant's credit card was timely submitted with a transmittal letter for entry into the national stage in the United States (Form PTO-1390), and requests that the holding of abandonment in the international application be withdrawn.

ANALYSIS

On 28 February 2002, the USPTO received the above Form PTO-1390 instructing the USPTO to charge the basic national fee to a credit card, which, according to the instant petition, had been canceled by Applicant on 27 February 2002. Indeed, on 21 March 2002, the bank issuing that credit card declined to honor Applicant's fee authorization presented by the USPTO.

Although the petition asserts that a replacement fee authorization was submitted on 3 March 2002 by facsimile, there is no evidence of receipt of such a submission. Moreover, Applicant is reminded that the basic national fee required by 35 U.S.C. 371(c) may not be submitted by facsimile. 37 CFR 1.6(d)(3), 1.8(a)(i)(F); MPEP 1893.01(a)(1) (Rev. 1, Feb. 2003). Accordingly, even if the replacement fee authorization transmitted by facsimile on 3 March 2002 were received by the USPTO, it would not have been processed.

CONCLUSION

Since Applicant did not remit the basic national fee on or before 29 April 2002 (Monday), the international application is properly held abandoned as to the United States on 28 April 2002. Consequently, the petition to withdraw the holding of abandonment in this application will not be withdrawn. The petition is thus **DISMISSED without prejudice.**

While Applicant has the option of filing a renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment in the international application as to the United States, Applicant is strongly urged to, instead, seek to revive the application by filing a petition under 37 CFR 1.137(b). To be grantable, such a petition in the instant case requires:


- (1) The \$450 basic national fee and the \$650 petition fee, both in small entity amounts;
- (2) A statement to the effect that the entire delay in filing the basic national fee from its due date until the filing of the instant petition under 37 CFR 1.137(b) was unintentional.

A renewed §1.181 petition must be filed within **TWO MONTHS** of the mailing date of this decision. 37 CFR 1.181(f).

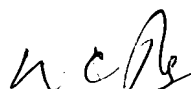
A §1.137(b) petition, should one be contemplated, is not subject to this 2-month limitation. However, Application is reminded that an intentional delay in filing that petition may lead to the denial of the petition. MPEP 711.03(c)(III)(D) (Rev. 1, Feb. 2003). A blank form for a §1.137(b) petition is attached.

Any further correspondence with respect to this matter, deposited with the United States Postal Service, should be addressed to:

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
PO Box 1450
Alexandria, VA 22313-1450



Boris Milef
PCT Legal Examiner
PCT Legal Office



RC Tang
Petitions Attorney
PCT Legal Office
Telephone: 703-308-1315
Facsimile: 703-308-6459

Attachment: Form PTO/SB/64 (05-03)